

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

In The Matter Of:)		
)		
FRED E. SVALDI,)		
)		
Complainant,)	Charge No.	1999CN1301
)		
and)	ALS No.	11098
)		
KEMPER NATIONAL INSURANCE CO.)		
)		
Respondent.)		

ORDER AND DECISION

May 10, 2004

The Commission by a panel of three:

Commissioners Sakhawat Hussain, M. D., Arabel Alva Rosales and Spencer Leak, Sr.

On review of the recommended orders of William H. Hall, Administrative Law Judge.

For the Complainant: Lonny Ben Ogus.

For the Respondent: Paul R. Garry, Meckler, Bulger & Tilson.

For the Commission: James E. Snyder, General Counsel,
Matthew Z. Hammoudeh, Asst. General Counsel.

This matter comes before the Commission pursuant to the Recommended Order and Decision and Supplemental Recommended Order and Decision of Administrative Law Judge William H. Hall.

On review of Judge Hall's recommendations, the public hearing record and the exceptions and response filed by the parties, for the reasons set forth below,

IT IS HEREBY ORDERED THAT:

The Recommended Order and Decision is reversed and the matter is remanded to the Chief Administrative Law Judge.

Pursuant to the Illinois Human Rights Act, Fred E. Svaldi (Complainant) filed a charge of discrimination against his former employer, Kemper National Insurance Co. (Respondent), 775 ILCS 5/1 - 101, et seq. (the Act). The Complainant charged the he was discharged from employment on the basis of an arrest record.

Judge Hall recommends that we dismiss the Complainant by summary decision. He found that there were no material facts at issue and the Respondent was entitled to judgment as a matter of law.

The Commission may render a summary decision in favor of either a complainant or a respondent "if the pleadings and affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a recommended order as a matter of law," *Cano v. Village of Dolton*, 250 Ill. App. 3d 130, 620 N.E.2d 1200, 189 Ill. Dec. 833 (1993).

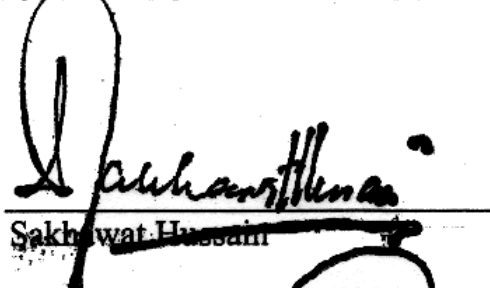
Central to Judge Hall's recommendations are findings that the Respondent did not base its decision on the fact of arrest alone, but rather on other information, which indicated that, the Complainant actually engaged in the conduct for which he was arrested. A decision based on independent information does not violate the Act, 775 ILCS 5/2-103 (B). But what Judge Hall indicates as "findings of fact" are summary conclusions.

For example, he found there was no material question of fact that: Actions were taken by divisions of the Respondent, rather than persons, and reports were made to the Respondent by the "Mundelein Police Department", rather than any officer or clerk.

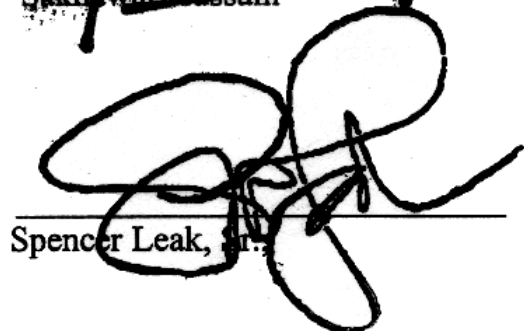
It may be that there are no materials questions of fact in this case, but there is no genuine recommendation on that matter in Judge Hall's recommendations. The matter is remanded to the Chief Administrative Law Judge for such proceedings as she deems fit.

STATE OF ILLINOIS
Entered this 10th day of May 2004.


HUMAN RIGHTS COMMISSION



Sakhawat Hussain



Spencer Leak, Sr.



Arabel Alva Rosales